

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MERRILL CLARK GARDNER,

Petitioner,

vs.

UNITED STATES OF AMERICA, and
M.V. JOSEPH, Warden, Pensacola
Federal Prison Camp, Florida,

Respondents.

Cause No. CV 23-45-BLG-SPW-TJC

ORDER

This case comes before the Court on Petitioner Merrill Clark Gardner's "Demand for Injunctive Relief." (Doc. 1.)

Gardner is currently incarcerated at Pensacola Federal Prison Camp in Florida. He was convicted in this Court of conspiracy to possess with intent to distribute methamphetamine. *See United States v. Gardner*, No. CR 15-73-BLG-SPW (D. Mont. filed July 29, 2016). He previously filed a timely 28 U.S.C. § 2255 motion challenging his conviction. *Id.*, (Doc. 95.) The motion was denied on November 19, 2018. (Doc. 99.)

Gardner's current filing is described by him as a request for injunctive relief and, explicitly, "this demand is not a § 2255, § 2241 or other remedy in U.S. Code." (Doc. 1 at 7.) However, Gardner's petition challenges the legality of his

current confinement at Pensacola. He contends that those having custody of him have improperly decided his ineligibility for early release from his sentence under various federal statutes. (Doc. 1 at 3 et seq.) Regardless of how Gardner characterizes this claim, “for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). This Court lacks jurisdiction.

Lack of jurisdiction may be cured if transfer is “in the interest of justice.” 28 U.S.C. § 1631. Transfer is not in the interest of justice. Gardner has not paid his filing fee in this Court, and he contends the Court is without authority to collect it. (Doc. 1 at 6 – 7.)

If Gardner wishes to proceed, he may file a petition in the proper District.

Accordingly, IT IS ORDERED:

1. The petition is DISMISSED for lack of jurisdiction.
2. All pending motions are MOOT.
3. The clerk shall enter, by separate document, a judgment of dismissal for lack of jurisdiction.

DATED this 10th day of May, 2023.



Susan P. Watters
United States District Judge